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October 2, 2003

## MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging Threats, and International Relations

From: J. Vincent Chase, Chief Investigator

Re: Briefing memo for the hearing *Emerging Threats: Assessing DOD Control of Surplus Chemical and Biological Equipment and Material* scheduled for October 7, 2003 at 10:00 a.m. in room 2154 Rayburn House Office Building.

## PURPOSE OF THE HEARING

The purpose of the hearing is to discuss weaknesses in Department of Defense (DOD) controls of surplus chemical and biological (CB) equipment and material.

## HEARING ISSUES

1. How effective are DOD controls over the transfer, donation or sale of surplus CB equipment and material?
2. What controls does DOD have in place to assure surplus CB equipment and material are not transferred, donated, or sold to terrorists?

## **BACKGROUND**

The Federal Property and Administrative Services Act<sup>1</sup>, as amended, places responsibility for the disposal of government real and personal property with the General Services Administration (GSA). The Act requires GSA to delegate disposal of Department of Defense (DOD) property to the Secretary of Defense, who in turn delegated this responsibility to the Defense Logistics Agency (DLA). **(Web Resource 1)**

The Defense Reutilization and Marketing Service (DRMS), a Defense Logistics Agency department, is responsible for the day-to-day management of the Department of Defense excess property disposal program. **(Attachment 1)**

Originally established in 1972 to consolidate the different military services' disposal operations, the Defense Property Disposal Service (DPDS) was renamed the Defense Reutilization and Marketing Service in 1985. **(Attachment 2)**

The Defense Reutilization and Marketing Service mission is "to provide the best value services to customers for the reuse, transfer, donation, sale or disposal of excess property." **(Attachment 3)** DRMS is based in Fort Belvoir, Virginia and has a fiscal year 2003 budget of approximately \$298.7 million. The DRMS operating budget is substantially offset by DRMS sales proceeds. **(Attachment 4)**

### **Disposal of DOD Excess or Surplus Property**

In accordance with federal regulations governing property management<sup>2</sup> and DOD policy outlined in the *Defense Materiel Disposition Manual*, DOD agencies and military services are responsible for determining whether property they hold is considered excess. **(Web Resource 2)**

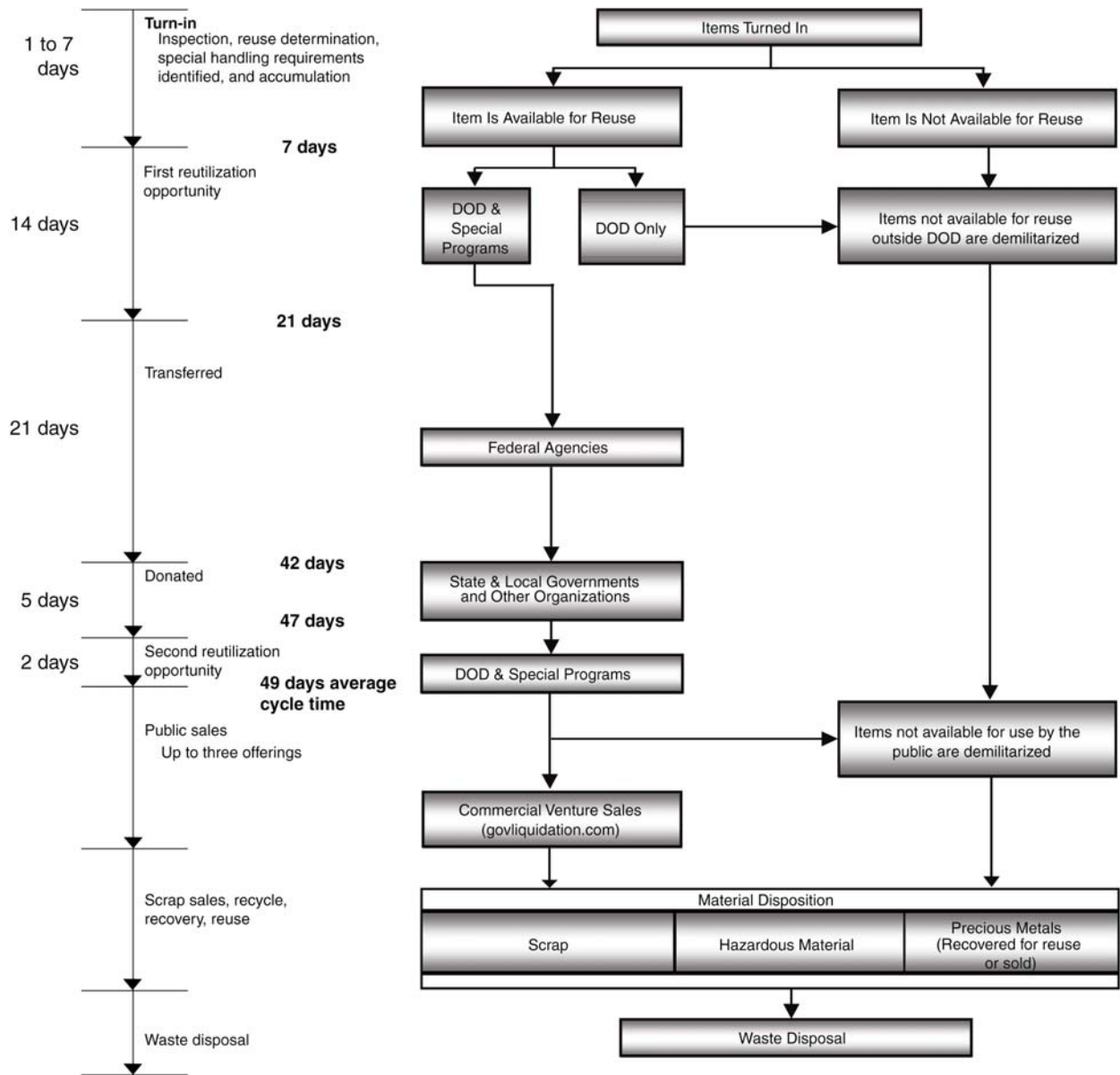
When a DOD component has property no longer needed, the property is turned over to a Defense Reutilization and Marketing Service field office, referred to as a DRMO. **(Attachment 5)**

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<sup>1</sup> 40 U.S.C. 10

<sup>2</sup> *Federal Property Management Regulations*, 41 C.F.R. Chapter 101 and the *Federal Management Regulation*, 41 C.F.R. Chapter 102 (2003), issued by the General Services Administration.

Figure 1: Defense Reutilization and Marketing Service Excess Property Disposal Process



Source: GAO.

DRMS disposes of excess property received from all DOD components. **(Attachment 6)** The inventory changes daily and includes thousands of items from clothing, vehicles, computers, hospital and laboratory equipment to scrap from Naval ships and much more. Excess items that are available for reuse are first offered to DOD components and 11 special excess material disposal programs. The 11 special programs are:

- *Humanitarian Assistance Program (HAP)*: DRMS provides DOD excess property, as coordinated through State Department, consisting of items of a humanitarian assistance nature, and distributed to needy third world countries.
- *Law Enforcement Support Office (LESO)*: DRMS issues DOD excess property to support law enforcement agencies in conducting their daily operations. This is a large customer base with approximately 12,000 state and local agencies currently enrolled.
- *DOD or Service Museums*: DRMS issues DOD excess property for museum use, display, or exchange. Currently, DOD or service museums may acquire items for housekeeping purposes only.
- *Academic Institutions and Nonprofit Organizations for Educational Purposes*: These educational entities may acquire donations of excess research equipment to educational institutions and nonprofit organizations for conducting technical and scientific education and research activities.
- *National Guard Units*: Requests for excess property for National Guard units must have the approval of the National Guard Bureau or their authorized representative.
- *Senior Reserve Officer Training Corps (ROTC) Units*: Senior ROTC units of the military services may obtain excess property from DRMO's to support supplemental proficiency training programs.
- *Morale, Welfare, Recreation Activities (MWRA) Services*: May requisition excess property through their servicing Accountable Officer. Items requisitioned from DRMO are for administrative and other purposes from which no direct benefits will be realized by individuals.
- *Military Affiliate Radio System (MARS)*: MARS operates under the command jurisdiction of the Military Services and is associated with the DOD communication system. The Military Services responsible

for MARS are authorized to requisition excess property through their respective accountable officers.

- *Civil Air Patrol (CAP)*: CAP is the official auxiliary of the USAF and is eligible to receive excess property without reimbursement. Title to the property is transferred to CAP under the condition that the property will be used by CAP to support valid mission requirements. The CAP must return unneeded property to the DRMO.
- *DOD Contractors*: The Military Service/Defense Agency Management Control Activity (MCA) is authorized to withdraw specific excess property from DRMO's for use as Government Furnished Equipment (GFE) to support officially stated contractual requirements.
- *Foreign Military Sales (FMS/Grant Aid)*: DRMS conducts the sale of excess defense articles to authorized foreign governments. Property is issued free and the country pays for packing, crating and handling. DRMS is reimbursed for administration costs only. **(Web Resource 3)**

Property that is not reutilized or transferred to other federal agencies can be donated to states and local governments and other qualified organizations. The redistribution of excess property is intended to allow the government to make full use of excess items, avoid unnecessary procurement of property and improve economy and efficiency of operations. Any residual property that is not reutilized, transferred, or donated can be sold to the public.

The DRMS has a commercial partnership with Government Liquidation, LLC to purchase and re-sell to the general public all non-demilitarization<sup>3</sup> usable property in the United States, Guam, Hawaii and Puerto Rico. **(Attachment 7)**

Government Liquidation, LLC markets these items over the Internet, allowing anyone to view, select, and bid on items they wish to purchase. Sales include high-value property, such as aircraft parts, machine tools,

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<sup>3</sup> The demilitarization program is a major part of the DRMS mission. It prevents offensive and defensive equipment from being released to the public.

hardware, laboratory equipment, electronics, material handling equipment, vehicles, personnel clothing and equipment. **(Attachment 8)**

If Government Liquidation, LLC is not successful in selling excess items, it returns these items to DRMS for scrap and recycling. **(Web Resource 4)**  
The Department of Defense reported that FY 2002 Government Liquidation, LLC domestic Internet sales of DOD excess property totaled about \$43 million including about \$2 million in overseas (non-internet) sales.

In addition, DRMS overseas locations conduct sales for non-demilitarization required usable property. These sales are either held through sealed bid, auction, or retail, fixed price sales, aimed at customers interested in buying inexpensive items for personal use.

DOD processed a total of over 41 billion excess property turn-ins<sup>4</sup> with an original acquisition cost of over \$167 billion from fiscal 1995 through March 2003. Usable items were reutilized, transferred, donated, or sold. Unusable items were downgraded as scrap and either sold or sent to landfills. During this same period, DOD sold usable excess property with an original acquisition cost of approximately \$51 billion and received sales proceeds of about \$1.5 billion or about 3 percent of the acquisition cost.

### **The Demilitarization Program**

The Demilitarization Program prevents offensive and defensive equipment from being released to the public. The DOD demilitarization policy establishes specific codes that are designed to indicate whether DOD property is available for reuse without restriction, or whether specific restrictions apply, such as removal of classified components, destruction of sensitive military technology, or trade security control<sup>5</sup>. **(Attachment 9)**

Examples of items with a demilitarization requirement include tanks, some electronics equipment, military aircraft, night-vision devices, infra-red (IR) reflective textiles used for clothing, tarps, and tents, radio sets, and optical

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<sup>4</sup> A turn-in consists of an item or group of items recorded on the same disposal turn-in document. Each disposal turn-in document represents on DRMS receipt.

<sup>5</sup> Trade Security Controls are policy and procedures designed to prevent the sale or shipment of U.S. Government materiel to any person, organization, or country whose interests are unfriendly or hostile to those of the United States.

sights. DOD requires that buyers who purchase items subject to trade security controls be subjected to pre-sales clearance procedures, including a background check and submission and approval of an End Use Certificate.<sup>6</sup> The Defense Logistics Agency Criminal Investigations Activity (DCIA) is responsible for pre-sale clearances and monitoring of post-sale compliance with DOD End Use Certificate requirements.

Over the last two years the Subcommittee has examined DOD management of chemical and biological equipment. As a result, the Subcommittee identified critical inventory control issues that were the subject of hearings held on June 25, 2002, *DOD Financial Management: Following One Item Through The Maze* (**Web Resource 5**), and on October 1, 2002, *Chemical and Biological Equipment: Preparing for a Toxic Battlefield* (**Web Resource 6**).

As a follow-up, in October 2002, the Chairman and Ranking Member asked the General Accounting Office (GAO) to audit Department of Defense controls over surplus chemical and biological (CB) equipment and material. (**Attachment 10**)

As part of the General Accounting Office review, the Subcommittee asked GAO to establish a fictitious company and purchase over the Internet excess DOD biological equipment and clothing needed to produce biological agents and protect the terrorist during the later stages of production of biological agents. (**Attachment 11**)

Using a case study approach, GAO has prepared the report, *DOD EXCESS PROPERTY: Risk Assessment Needed on Public Sales of Equipment That Could Be Used To Make Biological Agents*, (GAO-04-15) (**Attachment 12**) which is the subject of the October 7, 2003 hearing.

GAO will testify about the lack of security controls over the sale and disposal of biological laboratory equipment and material, and will recommend the Secretary of Defense perform a risk and vulnerability assessment to determine what controls are needed over excess DOD property that could be used to establish a laboratory to make biological warfare agents.

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<sup>6</sup> The End Use Certificate indicates the destination and disposition of sensitive, controlled items, such as military equipment, technical data, or dual use items.

The General Accounting Office spent approximately \$4,100 to purchase some of the equipment that would be required to produce biological agents. These items purchased had an original acquisition value of \$46,960.

**(Attachment 12)**

The biological laboratory equipment and material purchased by GAO included the following:

<u>Item</u>	<u>Original Acquisition Cost</u>	<u>What GAO Paid</u>
<i>Biological Safety Cabinet</i>	\$ 4,342.00	\$ 543.00
<i>Bacteriological Incubator</i>	\$ 545.00	\$ 193.00
<i>Laboratory Centrifuge</i>	\$ 500.00	\$ 517.00 <sup>7</sup>
<i>Evaporator</i>	\$ 3,592.00	\$1,300.00
<i>CB Protective Clothing</i>	\$ 2,410.00	\$ 293.00
<i>CB Protective Clothing</i>	\$35,380.00	\$1,101.00

As a result of GAO's report, DRMS issued bulletins on September 19<sup>th</sup> and September 26<sup>th</sup> temporarily suspending the sale and disposal of biological laboratory equipment pending the results of a risk and vulnerability assessment. **(Attachment 13)**

## **DISCUSSION OF HEARING ISSUES**

### **1. How effective are DOD controls over the transfer, donation or sale of surplus CB equipment and material?**

According to the General Accounting Office, DOD does not monitor sales of excess biological laboratory equipment. In addition, DOD monitoring of CB protective suits is ineffective. As a result, the uncontrolled sales of excess DOD biological laboratory equipment and protective clothing pose a risk that these items could be obtained and used by terrorists to establish a laboratory for producing a biological agent, and protect themselves during production and dissemination of the agent.

### **Excess Chemical and Biological (CB) protective clothing:**

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<sup>7</sup> On April 3, 2003, GAO purchased a bid lot containing a sealed laboratory centrifuge and four other laboratory equipment items for \$517.00. The original acquisition cost of the five items in the bid lot totaled \$2,560, including \$500.00 for the centrifuge.



DOD has clearly failed to properly implement a January 2003 policy restricting the sale and disposal of CB protective clothing. GAO was able to purchase excess protective suits from *govliquidation.com* in April and June 2003 even though DOD policy, effective January 7, 2003, prohibited the sale of designated CB protective clothing and restricted these items for DOD used only.

In addition, GAO found some of the CB protective suits purchased in bid lots<sup>8</sup> were defective Battle Dress Overgarments (BDO's) and/or contained infra-red (IR) reflective technology<sup>9</sup>. The defective BDO's purchased by GAO had been issued to local law enforcement agencies. This is significant because local law enforcement agencies are most likely to be the first responders to a terrorist attack.

The Defense Logistics Agency told GAO they had notified local law enforcement officials about the defective BDOs, provided them with information to identify the suits, and requested that they return any defective BDO's in their possession to DOD. However, according to GAO, DLA has not taken action to identify defective BDOs that have been issued to local law enforcement agencies and has not actively followed up to ensure that all defective BDOs were returned to DOD.

Compounding the problem, when the defective BDOs were returned by the local enforcement agencies, the BDOs were reentered into the disposal process at the DRMO, making them available for purchase again. GAO's ability to purchase these restricted items demonstrates DOD's supply chain management is ineffective.

During FY 2002 DLA began working with the Department of State on a major national security policy to ensure effective controls over IR reflective technology. In June 2002, DLA issued a policy notice prohibiting the sales of items with IR reflective technology. However, the CB protective clothing purchased by GAO did contain reflective properties. GAO tested and confirmed that these protective suits had IR properties and found the percentage of their IR properties varied. GAO contacted DLA officials

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<sup>8</sup> A bid lot refers to one or more items, or a mixed group of items, that are offered for sale to the highest bidder.

<sup>9</sup> Infrared reflective technology protects military personnel and equipment from detection at night.

regarding the percentage threshold for restricted items with IR reflective properties from sale to the public. According to GAO, DLA said that a reflective properties threshold had not been established and therefore, a policy had not yet been finalized.

**Excess Biological Laboratory Equipment:**

GAO bought excess biological laboratory equipment over the Internet that could be used to produce biological warfare agents and identified a large secondary market for used biological equipment in good condition.

GAO found some buyers of excess DOD biological laboratory equipment resold these items to buyers in Canada, the Philippines, Malaysia, Egypt, and Dubai in the United Arab Emirates for transit to other countries prohibited from receiving exports of trade security controlled items.

Law enforcement officials have identified individuals in Canada, the Philippines, and Dubai in the United Arab Emirates that are known to be involved in transshipments to terrorist-supporting countries. Under the Export Administration Act, the Secretary of State has designated Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria as countries who have provided support to terrorists. According to GAO, due to poor trade security controls for biological laboratory equipment, there is no assurance biological equipment has not fallen into the wrong hands.

DOD has not attempted to determine who is buying excess biological equipment or how these items were being used as a basis for assessing security control over these items.

According to GAO, the current approach for applying trade security controls to specifically listed items does not consider the range of other medical or biological equipment that could be used for the same purpose as items found on the Commerce Control List<sup>10</sup>.

**2. What controls does DOD have in place to assure surplus CB equipment and material are not transferred, donated, or sold to terrorists?**

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<sup>10</sup> The Commerce Control List is list of items that have a dual military and commercial use.

GAO found that DOD had no restrictions on domestic sales of biological equipment. For export sales, DOD follows federal regulations issued by the Department of Commerce for controlling the sale of excess biological equipment.

Federal regulations issued by other agencies for controlling biological laboratory equipment and CB protective clothing are based on international agreements reached by members of the Australia Group<sup>11</sup> (**Attachment 14**) to control proliferation of chemical and biological weapons. However, federal regulations issued by the Department of Commerce focus on trade security (export and import) control over specifically named items and omit numerous items that could be used for the same purpose as controlled items.

While DOD revised department policy in January 2003 to restrict CB protective clothing and related gear from public sale, GAO did not identify any DOD policies that address control of domestic or foreign sales of biological equipment that can be used to make biological agents.

GAO's analysis of the Commerce Control List<sup>12</sup> dual use items<sup>13</sup> determined that although some specialized types of biological equipment are subject to trade security control, which restrict them from export to certain countries, the vast majority of these items are not restricted from sale to the general public even though the items could be used for the same purpose as the restricted items. For example, the excess DOD biological equipment items that GAO purchased over the Internet were not listed as requiring trade security control.

Further, although DOD policies and procedures require the submission and approval of an End User Certificate for the purchase of a Commerce Control List item, and sales of these items to foreign countries may require approval

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<sup>11</sup> The Australia Group is a multinational body that works to halt the spread of chemical and biological weapons and has developed common control lists of items, including biological equipment related to the development of biological weapons.

<sup>12</sup> The Commerce Control List included in Export Administration Regulations, 15 C.F.R., Chapter VII, Subchapter C (2003) is consistent with the lists agreed to by the Australia Group.

<sup>13</sup> Dual use refers to property that has a commercial use and also supports a military or government mission.

of an export license, GAO found that these controls could be easily circumvented.

Further, the availability of low cost biological laboratory equipment poses a risk to national security. The Department of Defense should not be in the cut-rate discount business for terrorist agents.

## **WITNESS TESTIMONY**

### **PANEL ONE**

**Mr. Shelton Young**, Director, Readiness and Logistic Support Directorate, Office of Inspector General, Department of Defense will testify about DOD-OIG review of DOD inventory control of CB equipment and material.

**Mr. Gregory Kutz**, Director, Financial Management and Assurance Team, U.S. General Accounting Office will testify about GAO's review of DOD control over the public sale of selected excess CB equipment and material.

### **PANEL TWO**

**Mr. Alan F. Estevez**, Assistant Deputy Under Secretary of Defense (Supply Chain Integration), Department of Defense will testify about DOD-ALT guidelines, policies, procedures, and the oversight of these guidelines for controlling the disposal of excess biological equipment and protective CB clothing.

**Mr. Frederick N. Baillie**, Executive Director, Distribution and Reutilization Policy, Defense Logistics Agency will testify about DLA disposal of excess equipment and oversight of DRMS.

**Colonel Patrick E. O'Donnell**, Commander, Defense Reutilization and Marketing Service, Department of Defense will testify about controlling the disposal of excess biological equipment and protective CB clothing.

## **ATTACHMENTS**

- 1.** Defense Logistics Agency, Defense Reutilization and Marketing Service, *Strategic Business Plan 2002-2007*.
- 2.** Defense Logistics Agency, Defense Reutilization and Marketing Service, *DRMS History "At a Glance"*, updated July 2001.
- 3.** Defense Logistics Agency, Defense Reutilization and Marketing Service, *Mission Statement and Strategic Goals*, September 2003.
- 4.** Defense Reutilization and Marketing Service  
Fiscal Year (FY) 2003 Budget Estimates
- 5.** Defense Reutilization and Marketing Service field office,  
National Commend 2003, Site Map.
- 6.** Defense Logistics Agency, Defense Reutilization and Marketing Service, *Reutilization Means Big Savings*, updated April 4, 2003.
- 7.** Government Liquidation, LLC, a subsidiary of Liquidity Services, Inc.
- 8.** *Pentagon Turns To Auctions On Internet to Clear Out Attic*, Wall Street Journal, Anne Marie Squeo, Staff Reporter, May 13, 2003.
- 9.** Defense Logistics Agency, Defense Reutilization and Marketing Service, *The Demilitarization Program*, updated April 2001.
- 10.** Letter of Inquiry from Congressman Christopher Shays, Chairman, Subcommittee on National Security, Veterans Affairs, and International Relations dated October 18, 2002 to United States Comptroller General David Walker, and Letter of Inquiry from Congressman Dennis J. Kucinich, Ranking Member and Congresswomen Janice D. Schakowsky, Subcommittee on National Security, Veterans Affairs, and International Relations dated October 18, 2002 to United States Comptroller General David Walker.
- 11.** How Anthrax is Weaponized, Alice Park, Time Issue: November 5, 2001, Vol. 158, No. 20, Pg. 38+, Section: Bioterror.

**12. DOD EXCESS PROPERTY: Risk Assessment Needed on Public Sales of Equipment That Could Be Used To Make Biological Agents**, Draft Report, GAO-04-15, October 2003.

**13. DRMS DEMIL BULLETIN, Interim Procedures for Lab Equipment**, update September 19, 2003 and **DRMS DEMIL BULLETIN, Interim Procedures for Lab Equipment**, update September 26, 2003.

**14. The Australia Group, List of Dual-use Biological Equipment for Export Control**, January 2003.

## **WEB RESOURCES**

1. The Defense Logistics Agency (DLA)  
< <http://www.dla.mil/>>

2. The Defense Logistics Agency (DLA),  
DLA Publishing Systems e-Guide  
*Defense Materiel Disposition Manual*, DOD 4160.21-M  
< <http://www.dla.mil/dlaps/dod/416021m/guide.asp>>

3. The Defense Logistics Agency (DLA),  
*Defense Materiel Disposition Manual*, DOD 4160.21-M  
< <http://www.dla.mil/dlaps/dod/416021m/Chap5.pdf>>

4. Government Liquidation, LLC, a subsidiary of Liquidity Services, Inc.  
<<http://www.govliquidation.com/about/index.html>>

**5. Government Reform Committee, National Security, Veterans Affairs and International Relations Subcommittee hearing, *DOD Financial Management: Following One Item Through The Maze***, Serial No. 107-208,  
<[www.gpo.gov/congress/house](http://www.gpo.gov/congress/house)>

**6. Government Reform Committee, National Security, Veterans Affairs and International Relations Subcommittee hearing, *Chemical and Biological Equipment: Preparing for a Toxic Battlefield***, Serial No. 107-232,  
<[www.gpo.gov/congress/house](http://www.gpo.gov/congress/house)>

## **WITNESS LIST**

### *PANEL ONE*

**Mr. Gregory Kutz**, Director  
Financial Management and Assurance Team  
U.S. General Accounting Office

accompanied by

**Ms. Gayle L. Fischer**, Assistant Director  
Financial Management and Assurance Team

**John J. Ryan**, Assistant Director  
Office of Special Investigations

**Keith Rhodes**, Chief Technologist  
Applied Research and Methods

**Mr. Shelton Young**, Director  
Readiness and Logistic Support Directorate  
Office of Inspector General  
Department of Defense

### *PANEL TWO*

**Mr. Alan F. Estevez**  
Assistant Deputy Under Secretary of Defense (Supply Chain Integration)  
Department of Defense

**Mr. Frederick N. Baillie**, Executive Director  
Distribution and Reutilization Policy  
Defense Logistics Agency

**Colonel Patrick E. O'Donnell**, Commander  
Defense Reutilization and Marketing Service  
Department of Defense